

## MEMORANDUM DECISION

Under Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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LeCarthy Mitchell,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 30, 2022

Court of Appeals Case No.  
22A-CR-553

Appeal from the Switzerland  
Circuit Court

The Honorable W. Gregory Coy,  
Judge

Trial Court Cause No.  
78C01-1903-F5-185

**Weissmann, Judge.**

[1] After a criminal career spanning two decades and nine convictions, LeCarthy Mitchell was sentenced to five years imprisonment for possession of cocaine. Mitchell presents one issue on appeal: his sentence is inappropriate under Indiana Appellate Rule 7(B). We conclude that the trial court's five-year sentence aligns with the seriousness of the offense and Mitchell's lengthy criminal history and thus affirm.

## Facts

[2] During an unlucky trip to the casino, a small baggie filled with white powder fell out of Mitchell's pocket. A Gaming Enforcement Agent witnessed the incident on a security camera and approached Mitchell. After asking Mitchell to empty his pockets, which revealed a digital scale, the Agent brought Mitchell back to his office. Mitchell confessed that the white powder in the baggie was a mixture of cocaine and flour. Later laboratory analysis confirmed that the baggie held about one gram of cocaine. The State charged Mitchell with possession of cocaine and possession of paraphernalia the next day.

[3] Mitchell pleaded guilty to possession of cocaine as a Level 5 felony. A prior conviction in dealing for a controlled substance raised the felony from a Level 6 to a Level 5. Ind. Code § 35-48-4-6(b)(2).

[4] At sentencing, Mitchell stressed his immediate cooperation with the Agent, the low amount of cocaine involved, and that no identifiable victim exists. Tr. Vol. 2, pp. 26-28. And as to his character, Mitchell argued that he had a consistent work history, received an education, and had ongoing health problems

requiring medication and physical therapy. He also had custody of his two minor children.

[5] The trial court acknowledged these circumstances but found that Mitchell’s “lengthy” criminal history—this is Mitchell’s tenth criminal conviction—and the fact that he was on probation at the time of the arrest, outweighed the mitigating factors. App. Vol. 2, pp. 61-62. Mitchell received a five-year sentence out of a possible six years.

[6] Mitchell appeals, arguing that his conviction is inappropriate under Indiana Appellate Rule 7(B) given he “did not harm anyone or intend to harm anyone and had demonstrated rehabilitation.” Appellant’s Br., p. 4. We disagree.

## Discussion and Decision

[7] Indiana Appellate Rule 7(B) allows this Court to revise a sentence when “after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The “principal role of [this] review is to leaven outliers rather than achiev[e] a perceived correct sentence.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The defendant carries the burden of persuasion that the sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[8] The Legislature’s advisory sentence is the “starting point” when analyzing the nature of the offense. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). A Level 5 felony carries an advisory sentence of three years with a maximum of six years and a minimum of at least one year. Ind. Code § 35-50-2-6(b).

[9] The nature of the offense does not demand a revised sentence. Mitchell received an enhanced sentence of five years imprisonment. Although Mitchell's actions did not lead to any violence or harm, neither does the typical crime of simply possessing cocaine. *See* Ind. Code § 35-48-4-6; *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021) (ruling that courts consider “whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence.”) (citing *Moyer v. State*, 83 N.E.3d 163, 142 (Ind. Ct. App. 2017)). And despite Mitchell's assertions to the contrary, the digital scale found in his pocket also provides reason to suspect that Mitchell did not intend the cocaine entirely for personal use.

[10] Mitchell's character also supports the sentence. A history of criminal conduct supports an enhanced sentence. *See Brown v. State*, 10 N.E.3d 1, 6 (Ind. 2014). Further, the significance of prior criminal history is given increased weight when it relates to the current offense. *Wooley v. State*, 716 N.E.2d 919, 929 n.4 (Ind. 1999). Mitchell has an extensive criminal record—this is his tenth conviction. App. Vol 2, p. 61. But beyond just his tenth conviction, this is his sixth drug related offense. *Id.* His claims of rehabilitation ring hollow. Mitchell's last conviction happened only three years ago, and he was still on probation at the time of this incident.

[11] Because Mitchell has not shown his sentence to be inappropriate considering his character and the nature of the offense, we affirm the trial court's judgment.

Robb, J., and Pyle, J., concur.